

OF THE COMMISSION FOR HUMAN RIGHTS

JUNE 27, 2008

A regular meeting of the Commission for Human Rights was held in the agency conference room on Friday, May 30, 2008. Present at the meeting were Nancy Kolman Ventrone, Iraida Diaz Williams, Rochelle Bates Lee and Dr. John B. Susa. Absent were Commissioners Camille Vella-Wilkinson, Alberto Aponte Cardona and Alton W. Wiley, Jr. The Chair, Dr. Susa, called the meeting to order at 9:20 a.m.

A motion was made by Commissioner Williams to approve the minutes of May 30, 2008 with a correction. The motion to approve was seconded by Commissioner Ventrone and carried.

Status Report: Michael D. Évora, Executive Director

A written report was handed out. All new information is in bold print.

Case Production Report – Attached

Aged Case Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: Commissioner Cardona has been appointed to a Judgeship in Central Falls. Dr. Susa gave permission to have our letterhead reprinted with all the Commissioners' names on it.

OUTREACH: Commissioner Lee attended a forum on foreclosures given by the RI Realtors Association.

Commissioner Meeting -2- June 27, 2008

STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis Gaschen

LITIGATION: Report attached.

LEGISLATION: Crucial bills were discussed. Report attached

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 10.40 a.m. The next regular meet-ing of the Commission is scheduled for Friday, July 25 , 2008 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
JUNE 27, 2008**

I. BUDGET

The Governor has submitted his 2008 Proposed Supplemental Budget

as well as his Recommendations for FY 2009. The particulars are as follows:

S = State/General Revenue; F = Federal (EEOC/HUD)

	FY 2008	FY 2009	FY 2009	FY 2009
	(Final*)	(Request**)	(Gov. Rec.)	(Passed***)
S	951,677	885,777	991,659	991,659
F	370,890	395,049	391,309	391,209
T	1,322,567	1,280,826	1,382,968	1,382,968

***The Commission's Final FY 2008 budget is unchanged from the FY 2008 enacted budget reported earlier.**

****The Commission's FY 2009 Budget Request contained a 10% general (state) revenue reduction, as required by the Governor. The anticipated impact of this reduction, if it is implemented, is the loss of 2 investigative positions effective July 1, 2008, leaving the Commission at 12.5 FTEs. I incorporated impact statements into the budget submission attesting to the devastating effect such a loss would have on the Commission's ability to carry out its mission. After reviewing our submission, the Budget Office decided not to recommend the 10% reduction/FTE loss. The Budget Office forwarded its recommendations to the Governor, who did not recommend the revenue reduction.**

On March 13, the Governor's recommendations for the Commission's FY 2009 Budget were heard before the General Government

Subcommittee of House Finance. I attended to represent the Commission and answer questions. The Subcommittee asked questions relative to the Commission process, case statistics, backlogs and the impact a staff reduction would have on our ability to function effectively.

*****Passed by General Assembly; action not yet taken by Governor (as of 6/26/08). Per this budget, the Commission remains funded at the level recommended by the Governor, including our full 14.5 FTEs.**

II. FEDERAL CONTRACTS

EEOC – For federal FY 2008, according to EEOC Project Director Marlene Toribio, we have closed 152 co-filed cases. Our 2008 EEOC contract is for 246 cases; we must close an additional 94 co-filed cases by September 30 (23.5 per month) to meet the contract.

HUD – For FY 08, according to HUD Project Director Angela Lovegrove, we have taken in a record 58 new housing charges, 52 of which are co-filed with HUD. Within this same time period, we have processed 39 housing charges, 35 of which were co-filed with HUD. Final FY 2008 numbers will be calculated after assessing rulings on June 27 and 30, as well as any additional intake through and including June 30.

III. PERSONNEL

●E-Verify: On May 5, Cynthia Hiatt, Betsy Ross and I met with Anthony Bucci, Personnel Administrator, and Jim Pitassi of the state Personnel Office to be briefed on the Commission's mandatory use of the E-Verify system. (The Commission is obligated to utilize the system to verify the work eligibility of future hires in compliance with Governor Carcieri's recent Executive Order.) While the Commission remains opposed to the mandatory use of the E-Verify system by Rhode Island employers (and has testified against bills which would mandate the use statewide), Cynthia, Betsy and I completed the requisite on-line training program to ensure that we were in compliance with the Governor's Order.

***On May 19,** I sent a letter to Mr. Bucci, with a copy to the Governor, seeking his input on what I consider to be a defect in the language of one of the notices required by the federal government to be posted by all agencies using the E-Verify system. I have not received a response to date.

IV. OUTREACH – Refer to attached report

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 63% in federal FY 2007 (from 8 to 3 cases).

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 07 with approx. 355 cases in inventory. As of 6/16/08, we had a total of 377 cases in inventory; 76 cases were pending assignment. On that same day, 60 cases were assigned to investigative staff, leaving only 16 cases pending assignment.

●Arbitration: On April 30, an arbitration hearing was held on the union grievance in respect to the nonpayment of union dues by Susan Pracht and Jason Flanders during the period in which they served as Interns (before they were employed by the Commission). The Commission was represented by Dept. of Administration attorney Pamelee McFarland. Final briefs of the parties are due in July and a decision is expected by the end of the summer.

●National Fair Housing Training Academy (NFHTA) – Susan Gardner (Housing Outreach) will attend Week Five in the Fall. Jason Flanders (Housing Outreach) successfully completed Week Two in May and plans to attend Week Three in August. Attendance for NFHTA courses is fully funded by HUD.

●Website – The revised website is up! Take a look at the site at www.richr.ri.gov. Special thanks to Jason Flanders for inputting all of the revisions and to staff for suggestions/contributions. While the site is not perfect, it is vastly improved. We now will begin the process of translating the revised version to Spanish.

Respectfully submitted,

**Michael D. Évora
Executive Director**

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: June 27, 2008

Recent developments are in bold.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.

Atturio v. Évora

This is an appeal of a Commission decision on a motion to quash a Commission subpoena. The Commission decision granted in part and denied in part the motion to quash. The record before the Commission will be filed soon and a briefing schedule established.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Discovery is on-going.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The parties have filed a stipulation that provides that the Commission and the respondent will file our briefs on or before August 29, 2008.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and the Commission filed briefs. On November 2, 2007, the Commission received Judge Savage's Decision. Judge Savage held that the Commission had jurisdiction over the allegations and that the complainants were not required to appeal the Zoning Board decision before coming to the Commission. Judge Savage held that the Commission had made an error of law when it held that the

Cumberland Planning Board had the authority to waive the frontage requirements. She held that the way the process should have worked is that the Gaffneys should have gotten conditional approval from the Planning Board, gone to the Zoning Board of Appeals with a request for a variance, received conditional approval from the Zoning Board and then returned to the Planning Board for final approval. Judge Savage did not reverse the Commission Decision; she remanded it for the Commission to determine how the Commission would evaluate the evidence, given knowledge of the proper procedure. Judge Savage also asked the Commission to re-assess its Order which ordered the Zoning Board of Appeals to either grant the subdivision of the property or pay the complainants their expenses from going through the process, as the Zoning Board of Appeals may or may not have had the authority to provide subdivision approval. Justice Savage suggested that the parties consider whether Mrs. Gaffney should re-apply for subdivision of her property, following the proper procedure. Counsel wrote to the attorneys for the parties, given them several alternative steps and asked them how they would like to proceed. The respondent's attorney has said that it would like Mrs. Gaffney to re-apply for subdivision under certain conditions. An associate of Mrs. Gaffney's attorney phoned to say that Mr. Haupt is not well and to ask what needs to be done. I faxed him the November letter. He did not reply to it. I sent a letter to both parties on Jan. 17, asking them to notify the Commission by Jan. 31 if they agreed on a course of action or if they were requesting an additional evidentiary hearing. The letter stated that if they did not reply by Jan. 31, the

Commission would set dates for them to submit memoranda and then reconsider the Commission decision in light of Judge Savage's decision. On January 30, 2008, I was contacted by Mr. Haupt's law office; Maureen Gemma will be taking over the case. She requested and has been granted a thirty day extension to reply to the Commission's letter, the due date to respond has been extended to March 3. Ms. Gemma's office called and requested that their time to respond be extended to March 27, 2008. Ms Gaffney has been in the hospital. I agreed and they will send a letter confirming that with a copy to Mr. Heffner. The complainant's attorney has not sent the letter to Mr. Heffner, but she has talked to me over the past few weeks and represented that the complainant's response is being reviewed by the complainant and should be mailed to the Commission shortly. Counsel has informed Mr. Heffner of the status. On May 19, 2008, Counsel called and left a message for the complainant's attorney to call back. On May 27, 2008, the Commission received a copy of a letter from the complainant's attorney to the respondents' attorney. The letter is a settlement proposal from the Mrs. Gaffney.

J.J. Gregory and Sons v. RI Commission for Human Rights and Brenda Zeigler

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an administrative appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the administrative record with the Court

on February 14, 2008. The filed a stipulation, the respondent's brief is due June 2, 2008 and the brief of the complainant and the Commission is due on July 1, 2008. The respondents' brief has not yet been filed. Commission counsel called and was told that the brief would be filed the week of June 9. Commission Counsel called again recently and learned that respondents' counsel expects that their brief will be filed shortly. He will circulate a new stipulation on the due date for the briefs of the Commission and the complainant.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order and the Commission Decision on Attorney's Fees. The Commission filed the administrative record. The briefs were filed. The appeal was assigned to Special Magistrate Joseph Keough who rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. Mr. Joint's attorney filed a Motion for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act. The complainant and the Commission filed a Petition for Certiorari, Mr. Joint objected. On June 22, 2007, the Petition for Certiorari was denied. On July 16, 2007, Counsel filed a Motion to Dismiss the claim against the Commission for respondent's litigation expenses. The Commission argued that the Equal Access to Justice Act does not apply to it. Mr. Joint filed an Objection to the Motion to Dismiss and a

supporting memorandum on September 4, 2007. On September 18, Judge Patricia Hurst denied the Commission's Motion to Dismiss. She interpreted the Equal Access to Justice Act (EAJA) exemption, which exempts agencies "charged by statute with investigating complaints", to exempt those agencies which are required to investigate and interpreted the FEPA, R.I.G.L. 28-5-17, to provide that the Commission may, but is not required to, investigate charges of discrimination, and therefore determined that the Commission is not exempt from the EAJA. On December 21, 2007, Mr. Joint filed a Motion for Summary Judgment, asking that attorney's fees be awarded to him. The Commission's objection and memorandum in support of its objection was filed. Commission Counsel drafted a Motion for Summary Judgment and Memorandum in Support which Jim Lee of the Attorney General's Office reviewed and supplemented with additional arguments. The Commission's Motion for Summary Judgment and Memorandum in Support, signed by Commission counsel and Jim Lee, were filed on January 23, 2008. The hearing on both motions was heard on scheduled for April 8. Justice Hurst decided that the Commission is subject to the EAJA, but that it was substantially justified in its actions and therefore Mr. Joint was not entitled to attorney's fees. The parties must agree on an order to be submitted for her approval. Counsel for Mr. Joint and for the Commission have conferred. Commission Counsel will draft the Order and circulate it to Mr. Joint's Counsel. It appears at this point that neither party will appeal.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been subpoenaed to testify at the trial. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has been granted. The complainant's attorney has told the Commission that there is a calendar call on September 14, 2007 and that the trial may be scheduled in September or October. Counsel now says that the trial will be scheduled at a later date. On October 23, 2007, Counsel for Mr. King said that the trial would probably take place during the week of January 21. Counsel Hiatt is under subpoena for the trial. The trial will not be held during the week of April 28; a new date has not yet been set.

Kentucky Retirement System v. EEOC (U.S. Supreme Court 6/19/08)

Provisions in pension plans that consider age as an eligibility factor do not violate the Age Discrimination in Employment Act as disparate treatment unless the plaintiff shows that the employer's motivation was age discrimination. Under the plan in question, retirement normally occurred at 20 years of service or five years of service if the employee was 55 or older. If an employee became disabled before

he/she qualified for normal retirement, the plan would credit the employee with extra years, so that they would qualify for a pension. Such extra years were not available to those who were already qualified for a pension when they became disabled. The Supreme Court held that the plaintiff, who became disabled after age 55 and 5 or more years of service and thus did not receive any "extra" years of service, did not prove age discrimination. Older workers as well as younger workers, could benefit from the "extra years" depending on their specific situation.

Laboy v. Stat Health Services

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

Meacham v. Knolls Atomic Power Laboratory (U.S. Supreme Court 6/19/08)

Under the federal Age Discrimination in Employment Act (ADEA), once a plaintiff has shown that a practice has a disparate impact on the basis of age, defendant employers have the burden of establishing the defense that the practice is based on "reasonable factors other than age". (The Court of Appeals had held that the plaintiff needed to show disparate impact on the basis of age AND persuade the jury that the employer did not base its decision on reasonable factors other than age.] The FEPA has different, stronger standards for disparate impact on the basis of age, so this does not directly affect the Commission. This case does make the weak

federal ADEA standards closer to the FEPA standards.

MHRH v. Rhode Island Commission for Human Rights and the Estate of Dr. John Satti

MHRH has appealed the Commission decision that MHRH retaliated against Dr. Satti and discriminated against him on the basis of his age. The Commission will file the record of the Commission proceeding.

North Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights

The respondents appealed the Commission Decision and Order. The complainant died on May 20, 2007. The School Committee and Mr. Daly agreed to be trained, as required by the Order. Commission Counsel attended a Superior Court status conference on November 14, 2007. At that conference, Dr. Haley's lawyer indicated that Dr. Haley would attend training if Judge Thompson ordered it. Judge Thompson ordered it. The parties signed a dismissal stipulation of the appeal, providing that the Commission may enforce its order that anti-discrimination signs be posted and that training take place. The School Committee has asked for and received the anti-discrimination posters. The Commission has received a letter certifying that the training was done for the School Committee. Counsel for the School Committee has sent a letter to the School Committee to inform them of the protected classes omitted from the training; it needs one more clarification. Counsel also stated that she would try again to

convince Mr. Daly and Dr. Halley to be trained. Commission Counsel has written to respondent counsel about the needed clarification on the School Committee training and to ask whether the training of Dr. Daly and Dr. Halley has been completed.

Pilkington US AGR Auto Glass Replacement and Theroux v. D'Alessio and RICHR

Pilkington and Mr. Theroux filed an appeal of the Commission Decision and Order. The parties signed a stipulation which would encompass a settlement for Mr. D'Alessio, training for Pilkington's supervisors and dismissal of the case. The respondents have sent the Commission certification of the training of Mr. Theroux and the company's supervisors and the training packet. These materials have been reviewed by counsel, so this case is now completed.

Ponte v. GTECH

The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality Act and that redaction of the health care information would be burdensome. Notice has been given to the complainants whose files were subpoenaed and they have until June 4, 2007 to raise objections to disclosure of their health care information. One objection has been filed. Complainant's attorney to review Commission files. The

files are ready for counsel to copy except for one file in which an objection has been raised. Counsel will notify us if she wants to come to the Commission to review the files.

RICHR and Rossi v. Attruia

A complaint for enforcement was filed and judgment entered against Defendant. Payments on the judgment are made directly to complainant. All counsel are attempting settlement. The respondent has agreed to pay the Commission the fine due to the State of RI and a court hearing is scheduled for 7-2-08.

RICHR v. Cardinale

Justice Thunberg entered a Decision for RICHR on a Petition for Enforcement. Cardinale filed an appeal with the Supreme Court. Motion for withdrawal of defendant's appeal was filed. Waiting for Court approval. No appeal was perfected so no withdrawal is needed. Case closed.

RICHR v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. Suit against Aegis and Mers voluntarily dismissed. Default was entered against all remaining defendants. Default was removed by Court. Motions to compel discovery will be

filed.

RICHR v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Discovery commenced. Motions to compel will be filed.

RICHR and Lovegrove v. Escolastico

RI judgment was obtained and sent to FL lawyer for collection. Lovegrove to pay FL counsel to attach wages of Escolastico. Action brought to foreclose mortgage on property Escolastico owns in FL. I have notified our FL counsel.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport

Case resolved. Commission must annually monitor City training. Notice sent to the city regarding the annual training. Training completed for 2007.

Seymour v. Harvard Pilgrim Health

Case settled. Waiting for papers to be filed with the Commission so that the file can be closed. Called both counsel to determine status of receivership. Case closed.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court. Nothing has been done since appeal filed in 2004.